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الدورة الثالثة والعشرون

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير الفريق العامل المعني بمسألة التمييز ضد المرأة في القانون والممارسة

إضافة

البعثة إلى تونس ** *

موجز

يقدم الفريق العامل، في هذا التقرير، نتائج الرئسية وتوصياته بعد زيارته تونس. ويعرض بإيجاز سياق المساواة بين المرأة والرجل وحقوق الإنسان للمرأة، خاصة في ضوء الانتقال السياسي الراهن. ويعرض الإطار القانوني للمساواة وحقوق الإنسان للمرأة، بما في ذلك المنجزات والمجالات التي ينبغي إحراز مزيد من التقدم فيها، وينظر في الإطارين المؤسسي والسياسي لتعزيز المساواة وعدم التمييز. وينظر بعد ذلك في مسألة التمكين للمرأة المهمشة. ويحدد الفريق العامل الممارسات الحميدة المتبعة لتعزيز المساواة والقضاء على التمييز، ثم يختتم تقريره بملاحظاته وتوصياته.

* يُعمّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق الموجز، فيُعمّم باللغة التي ورد بها وبالفرنسية فقط.

** تأخر تقديمه.

Annex

[English and French only]

Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to Tunisia (from 7 to 11 January 2013)

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I. Introduction

1. The Working Group on the issue of discrimination against women in law and in practice visited Tunisia from 7 to 11 January 2013 at the invitation of the Government. Two of its five members, the Chairperson-Rapporteur, Kamala Chandrakirana, and Eleonora Zielińska, participated in the visit.

2. In accordance with its mandate as contained in Human Rights Council resolutions 15/23 and 20/6, the objectives of the Working Group were to engage in dialogue with the Government and other stakeholders on the issue of eliminating discrimination against women in law and in practice; to identify good practices relating to the elimination of laws that discriminate against women or are discriminatory in terms of implementation or impact; and to make recommendations on the improvement of legislation and the implementation of the law. With a focus on the participation of women in political and public life, including in times of political transition, for its 2013 thematic report, the Working Group paid particular attention during its visit to the political transition process and its impact on women's rights; the drafting of a new constitution and other legislative reforms; State institutions and national mechanisms; and the issue of women's political participation at all levels of decision-making. Prior to the visit, the Working Group had already engaged in a constructive dialogue on those issues with the Government through its communication procedure.

3. The Working Group held extensive consultations in Tunis and Jendouba with Government officials and local authorities, members of the National Constituent Assembly, the national human rights institution, national and local civil society organizations, religious institutions, constitutional experts, academics and representatives of United Nations agencies. It regrets that it had only five working days in Tunisia, owing to the last-minute rescheduling of the visit, which was originally scheduled to take place from 2 to 9 November. It welcomes, however, Tunisia's openness vis-à-vis the special procedures of the Human Rights Council as illustrated by the visits by seven mandate holders since May 2011.

4. The Working Group expresses gratitude to the Government for its cooperation in ensuring the success of the visit. It is grateful to the United Nations Country Team (UNCT), including the Office of the High Commissioner for Human Rights (OHCHR) country office, for its assistance prior to and during the visit, and to all interlocutors for their support for the mission. It looks forward to continuing to engage with the Government and other stakeholders on the issue of gender equality and women's human rights and the implementation of the recommendations made in the present report.

II. Context

5. Tunisia was at the forefront of change in the region, with popular demands for democracy and human rights resonating and inspiring the eventual birth of the "Arab Spring". Women participated in Tunisia's so-called Jasmine Revolution by taking to the street, side by side with men, to claim the right to democracy, freedom and social justice, dignity, and the right to equality. Women bloggers, journalists, activists, trade unionists, students, and mothers mobilized and took to the streets to call for the then President Ben

Ali's resignation, and for freedom and dignity.¹ This is consistent with a long history of activism by women. At the start of the 21st century, working class women who were made redundant from their positions in the textile industry took part in protests as part of larger struggles by social and trade unions.²

6. The Jasmine Revolution has brought greater freedom of opinion and expression, assembly and association, as well as the consolidation of the rule of law. At the same time, it has also increased the polarization of Tunisian society, generating a new sense of uncertainty and insecurity among many, including women who are fearful of losing the gains they have enjoyed since the country's independence in 1956.

7. Tunisia has in fact had a long and distinctive history in eliminating discrimination against women in law and practice for almost six decades. This started in 1956, a few months after independence and before the Constitution was in place, when President Bourguiba promulgated the Personal Status Code (CPS) in which many gender-based discriminatory practices were abolished.

8. The progressive CPS was formulated on the basis of the work of the Tunisian Islamic scholar Tahar Haddad as articulated in his book entitled *Our Women in Shari'a and in Society* published in 1930. Although this book was banned upon its publication and the author marginalized for the rest of his life, its promotion of equality for women provided independent the first President of an independent Tunisia, a quarter of a century later, with the theological foundation to launch a campaign for women's liberation as an integral part of his concept of the modern nation.³ This was soon followed by State policies giving women the right to vote and stand for elections and providing measures to enhance women's economic rights, including to open bank accounts and to start businesses without spousal permission. The conditions for equality between men and women were further developed with the introduction of family planning in the 1960s and the legalization of abortion in 1973.⁴

9. In 1985, Tunisia ratified the Convention on the Elimination of All Forms of Discrimination against Women, although with reservations on several key provisions, including on inheritance and the transfer of nationality to children, reflecting the increasing compromises Bourguiba was making as his political power waned. From 1987 on, President Ben Ali continued most of Bourguiba's reformist policies – termed by some experts as “State feminism” – and further institutionalized them by establishing a ministry for women and family affairs in 1993. However, the regime's growing authoritarianism meant that these government policies were implemented under politically repressive conditions, severely limiting the scope of change, including women's opportunity and capacity for full and equal participation in political and public life. Backsliding in the implementation of the CPS was not adequately addressed, in the interest of reducing political opposition to the Government. A study on the jurisprudence of ordinary courts found how some judges with a traditional view of the family were able to subvert legal guarantees of equality in the CPS by using religious references.⁵

¹ Fédération internationale des ligues des droits de l'Homme (FIDH), *Women and the Arab Spring: Taking their place?* (Paris, 2012), p. 8.

² Women's International League for Peace and Freedom, MENA AGENDA 1325, p. 3.

³ Caitlin Mulrine, “Women's Organizations in Tunisia: Transforming Feminist Discourse in a Transitioning State,” *Independent Study Project Collection*, Paper 1136 (October 2011).

⁴ Agustín Jomier, “Secularism and State Feminism: Tunisia's Smoke and Mirrors” (November 2011).

⁵ S. Ben Achour, “Le Code tunisien du statut personnel, 50 ans après: les dimensions de l'ambivalence,” *L'Année du Maghreb*, vol II (2005-2006).

10. Women participated in the protests to oust President Ben Ali despite the innovations brought by the CPS, which was rather seen as a top-down attempt at changing Tunisian views of men and women's roles. While it has afforded greater autonomy to women, the Code continues to sustain many of the traditional roles of women as mothers in marriage and after divorce. For example, although women can now end their marriages, they continue to live with the same legal and traditional dynamics that restricted them before divorce.⁶ Such an approach did not take into consideration the social, cultural and religious context of the newly independent State and the CPS created disparities between the law and a society that had yet to fully challenge deeply embedded issues of gender inequality.⁷

11. The family law reforms of the 1950 and 1960s were not prompted by any form of contestation or feminist movement within society. It is argued that although women's organizations existed prior to independence, Tunisian women played no role in the promulgation of the CPS. While women had the right to participate in public life, Bourguiba's promotion of gender equality fell short of the freedom to assemble.⁸ Tunisian State feminism has been described by women's rights advocates as "masculine feminism" in the sense that it does not aim at transforming women's traditional roles but at making them more efficient within a patriarchal family structure.⁹ Ultimately, half a century of laws and policies on women's liberation has had only limited impact in terms of comprehensive substantive equality outcomes.

12. With the Jasmine Revolution, the issue of women's status has once again become a central issue in the process of State building. Upon its establishment, the Transitional Government announced the withdrawal of reservations to the Convention. At the time of the Working Group's visit, however, the withdrawal process had not yet been finalized.

III. Women's rights at a time of political transition

13. Political transition in Tunisia is occurring in a highly polarized nation. Different parts of society have varying, not to say opposing, views on the nation's identity and future. At this very challenging point in the country's history, women's rights are at the core of a collision of views. The former Head of the High Authority for the Achievement of the Revolution Objectives affirmed this when he said that "the immense debate ... revolves around a few focal points: the first is the relationship between *sharia* and positive law; the second is the question of women's rights and of gender equality; and the third is the issue of freedom of conscience, of thought, and of expression."¹⁰

14. Despite significant shortcomings in the gender policies of the past regimes, there was and continues to be a strong constituency within society that believes in those policies' basic premise of equality and non-discrimination. This constituency comprises both women and men, of diverse backgrounds, who abide by the international standards of equality and human rights. The Working Group heard from many of them and notes with concern the

⁶ Ibid.

⁷ A. Betgeorge, "Society's Views and the Personal Status Code: A Discussion of Tunisian Men and Women's Roles in Marriage and Divorce", Global Studies Student Papers, Paper 18 (Providence College, 2010).

⁸ Caitlin Mulrine, "Women's Organizations in Tunisia: Transforming Feminist Discourse in a Transitioning State," (see note 3 above) p. 10.

⁹ Rabéa Naciri, "The Women's Movement in the Maghreb", Al-Raida, Volume XX, No. 100 (Winter 2003), p. 23.

¹⁰ Religion, Revolution, and Constitution: The Case of Tunisia, Lecture by Yadh Ben Achour, Harvard University, September 2012.

sense of fear that they have at losing the gender equality guarantees and gains that Tunisia has enjoyed to date. With an increasing incidence of attacks on freedom of expression, including the stigmatization of women who speak out, there is a heightened sense of insecurity as crucial negotiations and decision-making are ongoing on the new constitutional foundation of the nation.

15. Similar concerns at a prevailing climate of insecurity have been raised by the Special Rapporteur on human rights defenders, who referred to “statements in the media by various actors, including ... critical of women’s participation in public life and activities in defence of human rights.”¹¹ The Working Group is concerned that these statements, including by conservative Islamists, impede the emergence of an environment conducive to women human rights defenders’ work, as they contribute to the insecurity felt by such defenders. Many of the women met reported feeling unsafe in public spaces, particularly at night, and having to avoid walking in the street unaccompanied by a male after 5 p.m. In this respect, the Group wishes to recall the case of “Meriem”,¹² which is considered by many women as illustrative of a prevailing context of violence and insecurity.

16. In spite of the challenges, women continue to take an active part in the political transition, at street level and through official processes. They participated as voters, candidates and observers during the country’s first free and democratic elections in October 2011, in which the Ennahda Party won the most seats in the National Constituent Assembly (NCA). This institution is now leading the drafting of the country’s new constitution. Although parties were obliged to respect the rules requiring parity of male and female candidates on electoral lists, few placed women at the top of lists, thereby limiting the effects of this legislation.

17. The trend is not consistent across institutions of the State, however. In the Ennahda-led coalition government, women are severely underrepresented in top decision-making positions. As of March 2012, in the 41-member Government, there were 3 women.¹³ While the Government has stressed its commitment to maintaining women’s rights, several of its representatives have made statements calling these into question. For example, in February 2012, the Minister for Women and Family Affairs said that customary marriage or *orfi* was a “personal freedom”.¹⁴ Also, in November 2011, a member of parliament affiliated with Ennahda declared that single mothers were a disgrace in an Arab Muslim society. Such statements have contributed to the sense of a genuine risk of regression in existing guarantees of equality between men and women felt among the country’s advocates of women’s human rights.

18. The initial draft of the constitution generated heated debates and public protests when it ascribed women’s role as “complementary to that of men in the family”. The NCA then repealed this clause in the following draft and further introduced an article on the elimination of violence against women. In reviewing the latest draft constitution during the time of its visit, the Working Group found persisting loopholes and ambiguities in the draft which, if not removed, would undermine the protection of women’s rights and the guarantee of gender equality. For the Working Group, this reaffirms the nature and depth of the political divisions within Tunisian society at this critical moment in its history.

19. The heightened polarization of society in this time of political transition, which has at times expressed itself in violent clashes, has permeated beyond the formal political institutions and processes, including into educational institutions. The Group was informed

¹¹ A/HRC/22/47/Add.2, para. 71.

¹² A/HRC/22/67 and Corr.1 and Corr.2, p. 122.

¹³ FIDH, *Women and the Arab Spring: Taking their place?* (see note 1 above), p. 8.

¹⁴ *Ibid.*, p. 10.

that, since the revolution, there has been a rise in religious extremism in universities. An increasing number of female students in Tunisia have started to wear the *niqab*, which, unlike the *hijab*, the prohibition on which was lifted after the revolution, is a barrier to communication between teachers and students and can prevent teachers from being able to identify their students. In March 2011, the Minister of Education announced that the prohibition on wearing the *niqab* in educational institutions would be maintained. Following this decision, a number of violent conflicts involving young *salafists* took place in universities and demands were further made for gender segregation in classes.¹⁵ The Working Group heard the case of a university dean who was attacked for not allowing the *niqab* in the examination room, in accordance with a decision of the scientific council of Manouba University, and prosecuted for alleged physical violence against a female student. According to stakeholders in academia, the frequent on-campus protests and sit-ins, in which violence has been used in some cases, have had a negative impact on the functioning of a number of universities.

20. The Working Group heard concerns from women's rights advocates and education specialists about the increasing number of non-formal kindergartens operating outside the supervision of the Ministries for Women's Affairs. Responding to the shortage of public kindergartens, religious associations have been establishing kindergartens within their respective communities. The Working Group was given access to reports on the "radical indoctrination" of children under the supervision of women who wear the *niqab*, whereby mixed classes of boys and girls are prohibited and the veil imposed on girl children.¹⁶ It wishes to emphasize that children should be protected from extremist political or religious ideology.¹⁷ According to information received by the Ministry for Women and Family Affairs, an interministerial meeting has been convened on this matter, involving the Prime Minister's Office, which is responsible for the delivery of authorizations to open associations, and an interdepartmental commission was created to establish an inventory of children's institutions established by Koranic associations and to ensure the effective oversight thereof.

21. A time of political transition is also a time for States to account for past abuses. In the immediate aftermath of the revolution, a multiplicity of ad hoc initiatives were undertaken to provide compensation to those who had been victims since the December 2010 riots. Among the victims were women who were subjected to specific forms of police violence, including sexual harassment and rape.¹⁸ The *Association Tunisienne des Femmes Démocrates* (ATFD) documented cases of rape by members of President Ben Ali's special forces in Kasserine and Thala during the repression of protests. There were also reports of women protesters being raped while in detention in the Ministry of Interior from 14-15 January 2011 in Tunis. The Working Group was made aware of gender-based discrimination in the delivery of compensation to women victims as this followed religious practices on inheritance whereby women receive only half the amount received by men.¹⁹ It was not able to verify, during its visit, to what extent all women victims entitled to compensation received their right without discrimination.

¹⁵ See A/HRC/22/47/Add. 2, paras. 76-77.

¹⁶ http://www.opinion-internationale.com/2013/02/20/la-mise-en-danger-de-la-petite-enfance-tunisienne_15918.html

¹⁷ CRC/C/THA/CO/2, para. 63(d).

¹⁸ FIDH, *Women and the Arab Spring: Taking their place?* (see note 1 above), p. 8.

¹⁹ Sana Ben Achour, "L'inégalité face au « martyr »: quand l'épouse et la fille comptent pour moitié", *Maghreb Emergent* (13 September 2012).

22. The Working Group supports the call made by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence²⁰ for Tunisia to take a comprehensive approach to transitional justice linking reparations with advances in truth-seeking, criminal prosecutions, institutional reforms, and other measures to guarantee non-repetition, and further emphasizes the need to ensure the responsiveness of all transitional justice measures to the gender dimensions of past human rights violations and to the specific needs and interests of women victims, including for transformative reparations.²¹ The Group notes that the account of what women have endured at the hands of the authoritarian regime has so far tended to focus on the abuses committed during the revolution and not before. During the dictatorship, women suffered from “brutal beatings they received under interrogation; and sexual abuse at the hands of police and prison guards. They explained the oppression they faced even after their release – employment and educational blacklisting, and administrative requirements to check in to the local police station multiple times each day, thus preventing them from pursuing what few work and educational opportunities may be available. After decades of silence, these women are finally able to speak openly about these violations.”²² The Group also heard the testimony of women who were arrested and imprisoned under the former authoritarian regime on the basis of either their political beliefs or religious observance.

23. On 14 April 2012, a national dialogue on transitional justice was launched, which included consultations in the regions, in order to produce a consensus-driven draft law on a holistic transitional justice process. The technical committee created to oversee this process includes two women out of 12 members, both representing civil society organizations. The Working Group notes with concern the assessment of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence of the 24 dialogues which took place between 16 September and 7 October 2012 across the country, namely that “the design of these consultations appears to have fallen short of including all sectors of society in an efficient manner. The voices of women, so crucial in the deliberations of a country on how to move ahead, were not sufficiently represented in this undertaking”.²³

24. The technical committee has now completed the draft law covering the four elements of transitional justice, i.e. truth, justice, reparations, and guarantees of non-recurrence, and providing for the creation of a Truth and Dignity Commission which would be responsible for examining violations committed from 20 March 1956 until the date of its establishment. The draft law was submitted to the Ministry of Transitional Justice, approved by the Government and transmitted to the NCA in January 2013. The Working Group appreciates the special measure to ensure women’s representation in the Commission, guaranteed in article 20 of the draft law, stating that among the 15 members of the Commission, each gender is represented by at least one third of the members. It is, however, concerned that while it refers several times to the need to take into account the specificity of women’s, children’s and vulnerable groups’ experiences, there is no specific reference to women’s experiences, other than in the context of other vulnerable groups and in relation to the organization of hearings and design of the reparations programmes.

25. The time of political transition has been a reopening of the debate on the 60-year commitment by Tunisia to the principle of equality between men and women in a highly polarized environment. The Working Group is concerned that international standards on gender equality and human rights are still little understood by the public and are too often dismissed as foreign. Without the State’s full and effective guarantee of, among other

²⁰ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12800&LangID=E>

²¹ A/HRC/14/22, para. 31.

²² <http://ictj.org/news/struggle-against-invisibility-gender-justice-middle-east-and-north-africa>

²³ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12800&LangID=E>

human rights elements, freedom of expression and opinion, as well as freedom of thought, conscience and religion for all, the goal of a lasting peace and democracy would be undermined and differences of opinion could lead to further violence and other forms of violation. For such guarantees to be effective, they must include gender-responsive measures and a focus on women human rights defenders.

IV. Legal framework

A. Constitutional design

26. The Group's visit coincided with the consideration of a second draft constitution, released on 14 December 2012. As stated before, one of the most contentious debates since the first draft concerns the principle of full equality between men and women in all fields of life. This principle has been discussed in connection with other key provisions, namely those which refer to Islam as the religion of the State and to human rights. The Working Group heard widely divergent views on these provisions, including disturbing arguments promoting cultural relativism, including religion-based, in place of universal human rights – a clear regression from the 1959 Constitution's long-standing guarantee of "the fundamental freedoms and human rights in their universality, comprehensiveness, complementarity and interdependence" (art. 5).

27. The Working Group had the opportunity to meet with the General Rapporteur and five female members of the NCA. Their description of the debates among the Assembly members indicates certain areas of strong consensus, such as on the elimination of violence against women, as well as areas of deep and continuing contention, such as on the universality of human rights. The Group regrets not receiving any assurance of confidence over the resolution of the existence of potentially contradictory provisions in the final draft, such as that which protects the family structure and gender equality. It is concerned that there may not be enough political will to resolve divergent views through democratic debate.

28. While noting that the second draft of the constitution contains improved language on several issues, there are still loopholes and omissions that could result in both regressive judicial interpretation of existing legislations and regressive legislative actions. The absence of a clear reference to international human rights law fails to firmly situate the rights and freedoms set out in the draft constitution in its universally understood meaning.

29. In view of the forthcoming draft under preparation, the Working Group identifies some key elements of a gender-responsive constitutional design which would ensure that a country abides by its international obligations on non-discrimination on the grounds of sex, gender equality and the protection and promotion of women's human rights. A constitution should uphold equality between men and women in its entirety and without ambiguity. Such a constitutional design would include specific provisions on gender equality, including:

(a) A clear and explicit principle of equality between women and men before and in the law with the aim of framing equality priorities throughout the constitution;

(b) A clear and explicit prohibition of all forms of discrimination based on the grounds of sex and gender in all fields and in relation to other prohibited grounds, such as race, colour, language, religion, political or other opinions, national or social origin, property, birth or other status;

(c) The specific enumeration of women's civil, political, economic, social and cultural rights in all spheres of life, including family life;

(d) A provision on the possibility of taking positive action to promote gender equality in all fields of women's life, including gender parity in political and public life;

(e) Provisions on the protection of women's physical, sexual and moral integrity, criminalization of violence against women, and consideration of violence as a serious violation of human rights and gender-based discrimination;

(f) The principle of gender parity in all constitutionally mandated institutions.

30. In light of the universality of the principle of equality and non-discrimination, the constitutional design should also have clear framework provisions of a general nature on human rights, including:

(a) An explicit provision respecting human rights in their universality;

(b) A clear reference to the international human rights instruments and the recognition that all human rights are universal, indivisible, interdependent and interrelated;

(c) A provision on the primacy of international treaties, including the Convention on the Elimination of All Forms of Discrimination against Women, over domestic laws including clarity that international obligations take precedence over contradictory provisions in the Constitution and the legislation;

(d) A provision articulating the principle of non-retrogression in the protection and promotion of all human rights as an established principle of international human rights law.

B. Personal Status Code

31. The promulgation of the Personal Status Code on 13 August 1956, as mentioned above, was a breakthrough for the rights of women in family law, with positive repercussions for women in the social, economic, political and cultural domains. The promulgation of the code *inter alia* abolished polygamy and repudiation and instituted civil marriage with the explicit consent of both spouses, and gave men and women equal access to divorce before a court. These advances in favour of women were unprecedented in the Arab-Muslim context. Over the past decades, a number of legislative reforms have further strengthened the protection of women's rights in the family. Among them, in 1993, the wife's duty to obey her husband was replaced with the principle of reciprocal rights and duties of the two spouses. In 2007, the Personal Status Code was amended to harmonize the minimum legal age for marriage, now 18 years for both men and women. In 2010, the Tunisian nationality law was reformed, allowing women to transmit citizenship to their children in the same way as men.²⁴

32. Despite these successive reforms, a significant number of discriminatory provisions remain in force that deny women equal rights with men. For example, there are limits to a woman's right to freely choose her husband, since marriage between a Tunisian Muslim woman and a non-Muslim man is prohibited according to an administrative regulation of 1973. The Committee on the Elimination of Discrimination against Women expressed its concern at this regulation, which created an impediment not foreseen by the CPS.²⁵ During marriage, women continue to suffer discrimination in their personal relations with their husbands, who, according to article 23, remain the heads of the household. Maintaining

²⁴ World Bank, "Women, Business and the Law: Removing barriers to economic inclusion", (2012), p. 24.

²⁵ CEDAW/C/TUN/CO/6, para. 60.

such a notion, even confined to the maintenance obligation of his spouse and children, constitutes discrimination which violates the principle of equality. This unequal status is reinforced by the reference in the same article to customs and traditional practices with respect to the couple's conjugal duties. Although since 1993 this article has stipulated that the two spouses shall cooperate in managing the family's affairs, the proper education of their children and the conduct of their children's affairs, including education, travel and financial transactions, the status that is granted to the husband and father and the notion of customs and traditional practices give rise to certain abuses, in particular as regards the choice of domicile.

33. Discriminatory provisions still persist in relation to divorce and custody. Notwithstanding the adoption of specific legislative measures, in particular with regard to the custody of children and the family house (law of 4 March 2008), there are still some shortcomings: while the mother is entitled to the house as long as she has custody of her minor children, she might lose the house in case the family home was not listed as joint property.²⁶ Although the common property regime has been introduced, it is not well known by women and as a result is seldom applied. Women lose custody of their children if they remarry after divorce, while men can retain custody on the condition that "they have at their disposal a woman who will take responsibility for looking after the children" (art. 58).

34. Inheritance law, which is based on patriarchal and patrilineal family, remains discriminatory against women. While the law is characterized by a policy of emancipation of the individual from the group and equality between men and women, inheritance law remains profoundly unequal, still pervaded with an outdated notion of family. In the current system, even when women are related to the same degree as their male counterparts to the deceased, they are not entitled to equal shares. This inequality is explicitly part of the CPS, with several articles recalling the principle that the male heir receives a share that is double that of a female heir.²⁷ The Working Group is cognizant of the fact that inequalities between men and women in inheritance matters are traditionally explained by the specificity of inheritance relations in Muslim law aimed at compensating men who have to bear the costs linked to the maintenance of the family. However, this rationale is no longer appropriate to the situation which has evolved since women have been increasingly working outside the home and hence significantly contributing to the maintenance of the household, and since unpaid female homeworkers have gained more recognition. To avoid the application of Islamic inheritance law, some families execute civil contracts between parents and children; however even codified civil law is often subordinated to Islamic law at the discretion of judges when the former contradicts their interpretation of Islamic law.²⁸

35. The Group wishes to highlight the absence of any restrictions bound to religion to prevent marriage or inheritance, which clearly demonstrates the will of the legislature to remove these barriers, as also demonstrated by some case law in that regard.²⁹ While it is difficult to measure the real impact of the CPS on women's lives and to analyse the way judges have applied its provisions over the past 50 years, the Working Group nevertheless received information about some progressive, but also many regressive, judgements whereby, as mentioned earlier, judges use the Sharia as a source of customary law in matters concerning family law and inheritance. It also received repeated allegations, which,

²⁶ Under the 1998 reform on joint property, it is not compulsory to list the family home as part of the joint property.

²⁷ Articles 103-, 104-5, 105-3 and 106-4 of the CPS.

²⁸ UPR submission (2012), European Centre for Law and Justice.

²⁹ Civil Cassation Judgement n 31115m, 5 February, 2009; Tunis Appeal Court Judgement No 120, 6 January, 2004 and n 3351, 4 May 2004.

while being difficult to corroborate, point towards some worrisome trends. In Yadh Ben Achour's own words, "beginning with the elections of October 23, 2011, a number of controversies developed regarding adoption, polygamy, single mothers, and, generally speaking, women's rights".³⁰ In particular, the Working Group heard repeated concerns over the phenomenon of "*orfi*" or customary marriages. While the CPS prohibits customary marriages, imposes an official marriage procedure and sanctions non-compliance with these requirements as offences liable to prosecution, "*orfi*" marriages are allegedly increasingly tolerated, threatening the "prohibition of multiple marriages which is regarded as one of the key modernizing provisions of the Personal Status Code."³¹ Declarations by public officials have also raised outrage among women's rights defenders, such that proclaiming that single mothers, and, by association, their children, did not deserve the protection of the law.

C. Criminal Code

36. The Criminal Code went through successive reforms, which notably criminalized sexual harassment in 2004. With a view to guaranteeing women's right to physical integrity, section 207 of the Criminal Code was deleted because it recognized marriage ties as a mitigating circumstance when a husband murdered his wife or her partner upon catching them in an act of infidelity. However, the Working Group is concerned at the fact that article 218 provides for the termination of proceedings or the vacation of a conviction with the withdrawal of the complaint by the victim of an assault³². In 2010, the Committee on the Elimination of Discrimination against Women noted a very high number of complaints withdrawals. Also, although rape is criminalized (art. 227bis), the perpetrator can escape criminal prosecution if he marries the victim (art. 239) and marital rape is not criminalized. Furthermore, in sexual harassment cases, article 226quarter, paragraph 3, provides that "if no suit or acquittal is obtained, the person against whom the complaint is filed may, if necessary, request reparation for damage incurred without prejudice to criminal prosecution for false accusation." These articles, which are included in section III on offences against public decency, reveal the rationale based on morality underpinning these offences and overlook the protection of individual rights.

D. Reservations to the Convention on the Elimination of All Forms of Discrimination against Women

37. Tunisia ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1985, with reservations to key provisions: articles 9 (2) (on transfer of nationality to children), 15 (4) (on choice of residence) and 16 (g) (h) (transfer of family name to children and inheritance). Article 16 (c) (d) (f) (concerning marriage, divorce, and custody of children) would not be respected. A general declaration which, under international law, has no legal value was also made upon ratification: the provisions of Chapter 1 of the now suspended Constitution, which stated that the religion of Tunisia is Islam (art. 1), take precedence over the provisions of the Convention. While some laws in relation to articles 9, 15 and 16 have been modified in a positive way as noted earlier, the persistence of reservations, and in particular of the general declaration, impedes further progress towards the elimination of discrimination in law and in practice.

³⁰ Note No. 11.

³¹ Response of Tunisia to the Working Group questionnaire on public and political life.

³² CEDAW/C/TUN/CO/6, para. 26.

38. In response to a call by women's rights defenders for the withdrawal of all reservations to the Convention and of its general declaration, the interim government issued Decree No. 103-2011 on 24 October 2011, authorizing this. However, the internal withdrawal process was not followed at the time by the necessary notification to the United Nations Secretary General. Having been assured by the Government of its commitment to "finalizing, in an effective way, and as soon as possible, the process of withdrawing all reservations to the CEDAW and especially the general declaration",³³ the Working Group learned subsequently that this issue had been brought to the NCA for further discussion. It expressed concern about a recent statement made by the Minister for Religious Affairs, who declared that the lifting of reservations to the Convention was a flagrant violation of national sovereignty, cultural specificity and the values of Islam.

V. Institutional architecture

A. Ministry for Women and the Family

39. The institutional framework to support women in accessing their human rights, including for legal complaint, is situated within the State's executive bodies, primarily under the coordination of the Ministry for Women, Children and the Elderly (MAFFEPA), and in the Tunisian national human rights institution, the Higher Committee for Human Rights and Fundamental Freedoms (HCHRFF). These institutions play a critical role at this time of political transition, when the issue of gender equality is at the core of a national debate, characterized by abuse and violence, about the identity and future of the nation.

40. The MAFFEPA holds the responsibility of carrying out government policies regarding the advancement of the status of women, the spread of a culture of women's rights, the conduct of research and studies, and coordination with sectors, organizations and structures working in the field of women's rights, including civil society organizations. Its capacity to carry out its work is, uniquely, supported by three semi-independent sub-structures: the National Council on Women and Family, an advisory body focusing on most policy trends; the Centre for Research, Education, Documentation, and Information on Women (CREDIF); and the National Commission on Women and Development, an advisory body with the aim of mainstreaming gender approaches in development policies. CREDIF is in particular responsible for promoting studies and carrying out research and surveys on women and their status in Tunisian society; disseminating information on women's rights; and preparing reports on the condition of women.

41. While MAFFEPA is a legacy of the Ben Ali regime, since the revolution it has played a proactive role in promoting women's rights in the process of political transition. The Group recognizes and appreciates the role MAFFEPA has played in broadening the space for public discussion on women's political participation, including by engaging representatives from successive transitional governments and NCA, and in bringing together and facilitating communication among women who do not share the same ideology with regard to gender issues.

42. The Working Group shares the concern expressed by the Committee on the Elimination of Discrimination against Women³⁴ that while MAFFEPA has the authority to

³³ Government reply to AL TUN 3/2012 sent by the Working Group on 16 August 2012, received 19 December 2012 (unofficial translation).

³⁴ CEDAW/C/TUN/CO/6, para. 22.

deal with complaints based on sex discrimination, no such complaints have been filed in the past years.

B. National human rights institution

43. Potentially, women in Tunisia also have the opportunity to file human rights complaints to HCHRFF. However, this body, with its post-revolution membership, is attempting to reform itself in order to better comply with the Paris Principles. A draft law was drawn up in September 2011 which states that the Committee shall be composed of 65 members in addition to representatives of 14 government ministries. It also provides for the independence of the Committee, which is entrusted, inter alia, with monitoring human rights violations; conducting inquiries and investigation into such violations; receiving petitions and complaints from alleged victims; advising relevant authorities on the reinforcement of human rights and freedoms; giving its opinion regarding draft laws on human rights and fundamental freedoms and carrying out research and studies, and organizing events on human rights. The Group notes with satisfaction that the draft includes provisions providing for the principle of gender balance in the composition of the Committee. It also notes that the Committee's own request to be elevated to constitutional rank has found a positive resonance in the December 2012 draft text of the constitution.

44. The Working Group notes the establishment of the Ministry of Human Rights and Transitional Justice, and met with its Minister to better understand its role and potential contribution to women's human rights, including in transitional justice processes. This ministry also holds the authority to receive human rights complaints, alongside HCHRFF, which raises the need to articulate the distinct jurisdiction of each institution, together with the areas of collaboration and synergy, and to communicate this clearly to the public, including women facing multiple forms of discrimination. The Working Group points to the importance of consistency and coherence across both institutions in the interests of enhancing effective human rights protection and in accordance with international standards.

VI. Women's participation in economic and social life

45. The Tunisian revolution was the culmination of social upheavals which started in different regions, particularly those which were economically and socially disadvantaged, well before December 2010. One of the key issues that sparked the social unrest was the structural inequalities in economic and social life, economic growth having been limited to some sectors and its fruits unevenly distributed among inland and coastal regions of the country.

46. The Tunisian economy is based on agriculture, mining, energy, tourism, textiles, food, and the mechanical, electrical and electronic industries. Tunisia was one of the fastest growing economies in the Middle East and North Africa (MENA) region and managed to invest resources in key social sectors before the recent global financing crisis and political revolution unfolded.³⁵ Since 2011 industrial productivity, particularly in the mining sector, and economic performance have deteriorated. Profits from tourism have fallen by more than one third. Unemployment has consequently increased to 19 per cent, i.e. a figure of 800,000, for an active population of 3.5 million, compared to the 500,000 unemployed at

³⁵ United Nations Department for Social and Economic Affairs, Country Study Assessing Development Strategies to Achieve the MDGs in the Republic of Tunisia (October 2011).

the time of the fall of the previous regime.³⁶ The Working Group is concerned that the Government's inevitable priority of focusing on the search for democratic legitimacy does not sideline the urgent need to address crucial social concerns of the population.

A. Employment

47. According to the last national survey on population and employment (2010), the unemployment rate for women was 32.9 per cent as compared with 15.8 per cent for men.³⁷ Although illiteracy is generally decreasing, the illiteracy rate among women was 26.5 per cent while the rate for men was 11.5.³⁸

48. Unemployment is not uniformly distributed between regions and between age and gender categories. It is significantly higher for some regions and for some groups; youth and women have far more trouble finding jobs than male adults. Youth unemployment is above 30 per cent; the number of unemployed with higher education and university graduates was about 100,000 in 2008, of whom more than half were young women. Overall demand for skilled labour is low, and there is also a sizeable skill mismatch. Those who are employed have often had to accept jobs below their expectations. The duration of unemployment is also increasing. The lack of opportunities acts as an incentive for the youth to migrate, initially from the rural and small-town western areas to larger urban areas, especially greater Tunis. This has become a push factor for young people to join the rising numbers of those involved in international labour migration.³⁹

49. Tunisian legislation outlaws discrimination based on sex in the employment sector. Article 5(a) of the Labour Code prohibits discrimination between men and women in the implementation of the Code and the texts enforcing it. However, the Working Group was informed of the persistence of the traditional gender labour divide and a discriminatory job market in practice. Despite higher levels of education and qualifications among women, the gender divide applies, whereby paid work is reserved for men while women continue to perform unpaid household tasks. This division perpetuates arguments legitimizing male dominance in economic and family life. Women's economic dependence on men puts them at risk of violence, exploitation and disempowerment. The greater the family responsibilities, the more difficult it is for a woman to enter the job market in the absence of supportive policies. The proportion of married women in work in 2008 was 16 per cent lower than the national average for women as a whole.⁴⁰

50. Equal pay for work of equal value is guaranteed only in the formal sector, mainly in public administration, whereas in the private and informal sectors women earn less than men. Many women who work in the informal sector, such as domestic work and agriculture, are not covered by social security programmes. In some industrial sectors, such as the textile, clothing, and leather and footwear industries, which have the largest female workforce, job insecurity is most widespread. Women employed in these sectors are therefore the first to suffer illegal or collective redundancy, such as those which occurred following the lowering of trade barriers further to an arrangement between the European

³⁶ International Crisis Group, Tunisia: Relever les défis économiques et sociaux *Rapport Moyen-Orient/Afrique du Nord* No. 124 (June 2012).

³⁷ Minister of Women and Family Affairs, CREDIF, Yes to Constitutionalizing Women's Rights, Yes to Consolidating their Gains (September 2012).

³⁸ Ibid.

³⁹ MDG Achievement Fund, Engaging Tunisian Youth to Achieve the MDGs Project, 2008.

⁴⁰ ATFD, "Women's rights in Tunisia", Alternative Report submitted to the Committee on the Elimination of Discrimination against Women, October 2010.

Union and Tunisia in 2005, or during financial and economic crises. In addition, in some of these sectors trade unions encounter difficulties operating. Women are subject to sexual harassment and other forms of violence, as they are mostly young, poorly informed of their rights and isolated.⁴¹

51. Trade unions have historically played an important role in the development of the country and participated in advocating for social change. Women have been able to participate in trade unions, although the Working Group did not gather sufficient information to understand clearly the role women played within them in the struggle for equality between men and women. It heard that a multi-sectorial women's chamber had been created within the Syndicat Patronal, which comprises all industries, with the aim of promoting women's participation within the sectors/unions, which in the 1980s was still insignificant. Since its creation the chamber has had an important role in mobilizing women in their sectors of employment. It now has 24 regional chambers, which represent an important network, in touch with women's economic realities.

52. The Working Group visited the city of Jendouba in the north-west. At the time of the visit, the Governorate had a population of 425,000 inhabitants and a 17.9 per cent unemployment rate, including 12,000 university graduates. Almost half of the unemployed are women. Historically, Jendouba has been marginalized in terms of development and investment policies. This has had a negative impact on the equal enjoyment of economic and social rights, including through the depletion of public educational institutions and health services, and on progress in the modification of patriarchal family structures and in grounding the principle of equality between women and men in society. Exclusion and marginalization of certain regions were policies of the old regime as a means of political control.

53. In Jendouba agriculture is the main source of income and depends primarily on female labour, particularly older women, who are ready to accept the sector's low wages. These older rural women are predominantly casual agricultural labourers, who are collected every morning from the streets, transported standing in the back of trucks to the farms, and compelled to work long hours for meagre pay. The Working Group heard the testimony of one of these women, who explained that her plight was similar to that of others in her situation:

“I wake up at 5 am, my husband is sick and cannot work, I go to the field, pull up onions and potatoes, till 6 pm, I get paid USD 3 per day, sometimes the farmers do not want to pay me or promise to pay me later and they never do; if I work the family eats and if I do not we do not eat; during the school holidays my children come with me to work; I studied only until the end of primary school then my father took me out of school to work in the fields; I got married at 20; I do not receive any form of public assistance, I pay for my husband's medical care; I have two children, I did not want to have more, what for? To live miserably..., my parents-in-law live with us so I have to provide for them too.”

54. Many young rural women also depend on casual employment, particularly as domestic workers. Local stakeholders in government and civil society expressed their concern about the situation of young girls who have dropped out of school for economic reasons and are being sent by their parents to work in cities as domestic workers where they risk exploitation and slavery-like conditions. Many complained about how these young girls send their pay regularly to their fathers only to be denied inheritance later by law.

⁴¹ Ibid.

55. The Working Group considers the case of older women in casual agricultural employment and young women in casual employment as domestic workers to be forms of systemic discrimination in which multiple grounds of discrimination intersect to produce a serious violation of economic and social rights.

56. It also became evident to the Group that women in rural areas hardly participate in public and political life because of lack of education, the necessity to work often under inhuman conditions, economic dependency on their families and consequently the impossibility of challenging traditional roles and eventually pursuing ambitions of political and public careers. In addition restrictions imposed by the previous regime on the possibility for civil society organizations to operate freely represented an obstacle to women's associations being able to reach out to and support women in rural areas to mobilize and claim their rights. The revolution has provided an important opportunity to fill this gap, which some women's organizations have seized, although the impact of their work will take time to translate into concrete changes in the lives of rural women.

B. Education

57. Education is a fundamental right and has constituted a considerable investment for the country. Outline Act N. 80 of 2002 stipulates that "education is a national priority; school attendance is compulsory from ages 6 to 16; education is a fundamental right guaranteed to all Tunisians without discrimination on the grounds of sex, social origin, colour or religion". Enrolment of children has been almost universal since 1997/98;⁴² in 2011/12, for example, the enrolment rate for girls between 6 and 11 years of age was 99.1 per cent.⁴³

58. The Working Group regrets that such investment in education has not borne fruit, particularly for women, as they continue to be discriminated against in the labour market. Despite the fact that more girls than boys are enrolled in secondary school and that gross enrolment data for tertiary education also showed a higher enrolment ratio for women, women's economic participation remains low. The labour force participation rate among women aged 15 and above was only 26 per cent, compared to 71 per cent for men. Among young women aged 15-24 the labour force participation rate was 22 per cent, while for young men it was 43 per cent.⁴⁴ The Group heard that many young women graduates have no other option but to return to their parents' home and sometimes do not have the resources to access the Internet for job hunting.

59. The Working Group received testimonies reflecting the reality that educational institutions have become one of the arenas in which the ideological battle is being waged for the future of Tunisia. The case of the university dean referred to in paragraph 19 is a case in point. While the dean believes he was upholding the standards of his profession and giving all youth the equal opportunity to education by prohibiting clothes that would prevent anyone from acquiring knowledge, he has been accused of discriminating against women. This case is still pending in court but in the meantime has triggered mass mobilization on both sides in the debate.

60. It was also brought to the attention of the Group that the impact of deteriorating schools went beyond shaping the future opportunities of individual students. It also

⁴² CEDAW/C/TUN/Q/6/Add.1.

⁴³ République tunisienne, Ministère de l'éducation, Direction general des etudes de la planification et des systèmes d'information années scolaire 2011-2012, "L'éducation en chiffres". .

⁴⁴ UNICEF, Tunisia, MENA Gender Equality Profile, Status of Girls and Women in the Middle East and North Africa (2011).

influenced the availability of spaces for youth engagement in extra-curricular activities, such as in sports and culture. School-based youth centres and clubs which used to be open to the public had been closed down, further isolating schools from the public life of their community. The Working Group would like to emphasize the importance of schools, including in their extracurricular activities, in enhancing the capacity of young boys and girls to exercise their right to participate in cultural life, as defined by the Special Rapporteur in the field of cultural rights.

61. Further to its dialogue with the Ministry of Religious Affairs and the Mufti of the Republic, the Group notes the importance of an active role by these institutions in promoting the principle of equality and non-discrimination between men and women in all fields of life. The changing realities of women and men in Tunisian society have called for the renewal of religious institutions, including mosques and the diverse forms of religious education. The Working Group is of the view that the right to education includes access to human rights education in diverse religious contexts.

VII. Good practices

62. Throughout this report, the Working Group has identified a number of good practices relating to the elimination of laws that discriminate against women or are discriminatory in terms of implementation or impact. Here, it would like to highlight those in relation to women's equal opportunity for political participation and to the capacity to systematically address one of the main obstacles to women's full and active participation in political and public life, women's health.

A. Parity in the electoral law of 2011

63. For its first and free democratic election in October 2011, the High Authority for the Realization of the Goals of the Revolution, which was tasked to lead the process of legal and institutional reform, adopted Decree N°35 of 10 May 2011 concerning elections to the NCA establishing parity on electoral lists. This law showed the Government's commitment to enhancing women's involvement in political life and their role in the transition to democracy. Although parties were obliged to follow the rules requiring parity of male and female candidates on electoral lists, as provided for in article 16, few placed women at the top of lists, thereby limiting the effects of this legislation. According to official statistics, women only composed 7 per cent of those at the top of candidate lists.⁴⁵ On paper, this was a strong affirmative measure, but in practice, most of the more than 80 parties competing in the elections (with more than 1,500 lists registered) won only one seat in any one constituency, which went to the male candidate invariably heading the list, showing the gap in this field between the law and the practice. As a result, fewer women were elected in 2011 than in the previous election in 2009, with 57 women (26.3 per cent) elected among the 217 members of the NCA.⁴⁶ However Tunisia still remains the country in the region with the highest proportion of women in parliament.

⁴⁵ See www.isie.tn

⁴⁶ See <http://www.ipu.org/pdf/publications/wmnpersp11-e.pdf>

B. National Office for Family and Population

64. Since the 1960s, Tunisia has introduced a progressive family planning programme as a means to reinforce women's ability to manage the family in a way permitting her to be active outside of the home. This programme is run by the National Office for Family and Population (ONFP), which is associated with but independent from the Ministry of Health. ONFP, established in 1973 under the name of "National Family Planning", has centres in each of the country's 24 governorates. It develops, implements, monitors and assesses several programmes aimed at improving and ensuring universal access to sexual and reproductive health, contributing thereby to the achievement of the Millennium Development Goals. These programmes target women of reproductive age, adolescents and youth, men, couples and women victims of gender-based violence. Those offices provide a wide range of services free of charge, including family planning and contraception, antenatal and postnatal consultations, the fight against women's cancers, prevention of sexually transmitted diseases and AIDS, the sexual and reproductive health of adolescents and young people and psychological support for women victims of violence. ONFP staff perform administrative, medical, paramedical, and educational and social work. ONFP has been recognized internationally for its qualitative and quantitative results by the United Nations Population Fund (UNFPA) in 2004 and the World Health Organization (WHO) in 2009.

65. ONFP has been instrumental in improving the health status and access to reproductive health services of Tunisian women, and in particular those living in rural areas. In Jendouba, 70 per cent of the population lives in rural and often remote areas and a high percentage of women give birth at home. To reach out to those women and help them overcome geographical and economic obstacles, ONFP has mobile teams. Despite the challenges, ONFP was able to continue providing its services during and after the Revolution.

66. In 1965, Tunisia was the first Muslim country to legalize abortion during the first three months of pregnancy for women who already have more than five children. In 1973, article 214 of the Criminal Code authorized the performance of abortions on request during the first three months of pregnancy independently of the number of children already born.

67. The Group learned however that the resources of ONFP offices have been curtailed throughout the years. The office in Jendouba, for example, was not provided with the services of a gynaecologist to perform surgical abortions for seven years, despite the existence of the necessary equipment on its premises. The Office's mandate may also risk being integrated with the national health services, which lack the specialization and experience in family planning programmes and services. A growing trend of difficulties in accessing abortion services was reported, which had also been recognized by the Committee on the Elimination of Discrimination against Women in 2010,⁴⁷ in particular with regard to single women but also for married women. ONFP stopped providing services for abortion in 10 districts in 2007 due to budgetary constraints.

VIII. Conclusions and recommendations

68. Tunisia has long been hailed as a bastion of women's rights in the Arab world, since the promulgation of the Personal Status Code (CPS) and its subsequent reforms. As a result, women pursued their education and entered the workforce, birth rates declined and a growing middle class emerged. However, in the context of a highly ideologically divided post-revolution society, there have been growing fears of regression from the gains achieved to date on women's rights.

⁴⁷ CEDAW/C/TUN/CO/6, para. 50.

69. Recommendations put forward are meant to ensure the equal and full political participation of women in a time of political transition, to secure existing gains and continue forward movement in legal guarantees of non-discrimination between men and women, and to eliminate persistent barriers to gender equality, including in the context of multiple discrimination.

70. In order to ensure the equal and full political participation of women at a time of political transition, the Working Group recommends that the Government:

(a) Provide effective human rights protection for all, including for women exercising the freedom of expression and opinion and freedom of thought, conscience and religion in political and public life;

(b) Enforce the rule of law and provide safety in all public spaces at all times, particularly for women and in the context of fierce ideological debates, within the framework of human security;

(c) Ensure that the parity principle is incorporated in the Constitution and elections laws and that legal and policy measures, for example “zipper rules” and requirements that parties top half of their lists with a women, are put in place for its effective implementation;

(d) Improve the quality of debate on all dimensions of gender equality by enhancing evidence-based knowledge building on the changing lived realities of Tunisian women, including by independent research institutions such as the Centre for Research, Education, Documentation, and Information on Women (CREDIF);

(e) Create an enabling environment for the effective and sustainable functioning of autonomous women’s organizations and groups, including by supporting access to financial resources;

(f) Facilitate access for female and male parliamentarians to capacity-building opportunities to increase their knowledge of the State’s international human rights legal obligations and all aspects of women’s human rights;

(g) Ensure the gender-responsiveness of all aspects of the transitional justice process, guaranteed by law, including in providing reparations to women victims of past human rights violations with measures that have transformative potential;

(h) Ensure the proper design and effective functioning of the national human rights institution that is equipped to deal with all aspects of women’s human rights, in accordance with the Paris Principles.

71. The Working Group also recommends that the Higher Committee for Human Rights and Fundamental Freedoms and other independent national institutions enhance their proactive measures to address discrimination against women in law and in practice as integral parts of human rights protection and promotion and good governance, including by means of independent human rights monitoring systems accessible to all women.

72. In order to secure existing gains and continue forward movement in legal guarantees of non-discrimination between men and women, the Working Group recommends that the Government, including the National Constitutional Assembly:

(a) Enshrine the key elements referred to in paragraphs 29 and 30 for a gender-responsive constitution in the final draft Constitution to ensure non-discrimination on grounds of sex, gender equality and the protection and promotion of women’s human rights in line with international standards;

(b) Promptly complete the process of the withdrawal of both the reservations and the general declarations to the Convention on the Elimination of Discrimination against Women at both the national and international levels;

(c) Increase the capacity of State and civil society actors to eliminate all forms of violence against women, and establish the effective functioning of all legal complaint mechanisms for sex-based discrimination;

(d) Repeal all gender-based discriminatory provisions in the Personal Status Code and the Nationality Code as well as other statutory law and amend those in the Criminal Code, as identified in this report;

(e) Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, known as the Maputo Protocol;

(f) Implement recommendations issued by the Committee on the Elimination of Discrimination against Women in its concluding observations in 2010.

73. In order to eliminate persistent barriers to gender equality, including in the context of multiple discrimination, the Working Group recommends that the Government:

(a) Take immediate action to end slavery-like conditions of employment and provide decent work for all, including for poor rural women who work as casual labourers in agriculture;

(b) Ratify International Labour Organization Convention No. 189 (2011) concerning decent work for domestic workers and improve public understanding on the situation and rights of domestic workers;

(c) Introduce positive discrimination measures to encourage female access to work and eliminate the gender pay gap;

(d) Develop policies to encourage girls to remain in school, particularly in disadvantaged regions;

(e) Keep a national register of unemployed graduates and establish clear and objective recruitment criteria in the public administration and enterprises, while financially supporting the associations aimed at local and regional development, particularly those for unemployed graduates;

(f) Revitalize the capacity of young girls and boys to participate in cultural life in all its diversity, including by supporting the rebuilding and growth of youth centres and other relevant extracurricular activities in schools, in particular in disadvantaged regions;

(g) Improve the capacity of institutions of education, both secular and religious, to creatively and effectively teach about gender equality and human rights in diverse contexts, including through the use of relevant new scientific research and progressive interpretations of religion;

(h) Clarify responsibilities between ministries with regard to the phenomenon of associations opening children's institutions to ensure that their operation is made dependent upon a clear set of specifications in line with international human rights standards; increase the number of inspectors and inspections carried out in these institutions; and in case of non-compliance, promptly withdraw authorizations to operate;

(i) Improve women's access to health by reinforcing access to family planning centres, low-cost medical care and all forms of legal abortion services, including ensuring that such access is not limited by the lack of service providers.